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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 E. JEAN CARROLL,

4 Plaintiff,

5 v.

22 CV 10016 (LAK)

6 DONALD J. TRUMP,

7 Defendant.

8 -----x

New York, N.Y.
December 21, 2022
10:00 a.m.

9
10 Before:

11 HON. LEWIS A. KAPLAN,

12 District Judge

13 APPEARANCES

14 KAPLAN HECKER & FINK LLP
15 Attorneys for Plaintiff
16 BY: ROBERTA ANN KAPLAN
17 SHAWN GEOVJIAN CROWLEY
HELEN ANDREWS

18 HABBA MADAIO & ASSOCIATES LLP
19 Attorneys for Defendant
20 BY: MICHAEL T. MADAIO
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(Case called)

THE DEPUTY CLERK: Counsel for plaintiff, are you ready to proceed?

MS. KAPLAN: We are, your Honor.

THE DEPUTY CLERK: Could you please put your appearances on the record.

MS. KAPLAN: Sure. Roberta Kaplan from Kaplan Hecker. I'll let my colleagues do it for themselves.

MS. CROWLEY: Good morning, your Honor. Shawn Crowley and our colleague, Helen Andrews, are present as well.

THE COURT: Good morning.

THE DEPUTY CLERK: Counsel for defendant, are you ready?

MR. MADAIIO: Yes. Good morning, your Honor. Michael Madaio, with Habba Madaio & Associates, on behalf of the defendant, Donald J. Trump.

THE COURT: Good morning, Mr. Madaio.

Before we get into talking about timing, I want to make sure I understand everything you've told me in your joint submission.

First of all, with respect to the plaintiff, in footnote No. 2 on page 3, you indicate that you will have – I assume this means you'll furnish to the defense – the report of forensic psychologist regarding damages from the alleged rape.

Do you know who that is now? Who is that, if you

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1 know?

2 MS. KAPLAN: Yes. A woman by the name of Leslie
3 Lebowitz, your Honor.

4 THE COURT: Leslie Lebowitz?

5 MS. KAPLAN: Leibowitz.

6 THE COURT: Has she been involved in this case or the
7 other case before?

8 MS. KAPLAN: No.

9 THE COURT: So, she's an entirely new expert?

10 MS. KAPLAN: She's an entirely new expert. And I
11 think we said we'd have that report to them on the 9th.

12 THE COURT: We'll deal with that in a minute.

13 MS. KAPLAN: Okay.

14 THE COURT: Now, you referred to a second report from
15 your original damage expert.

16 So, who was that? I maybe should know this, but I
17 haven't memorized every paper in both cases.

18 MS. KAPLAN: A woman by the name of Ashlee Humphreys,
19 who teaches at Northwestern.

20 THE COURT: So, it's not a supplemental report,
21 because it's in a different docket number, but, in effect, it's
22 a supplemental report?

23 MS. KAPLAN: Exactly, your Honor.

24 THE COURT: Okay. Thank you for that.

25 Now, let me get to Mr. Madaio and footnote 3 in the

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1 joint submission.

2 You talk about conducting an independent medical
3 examination of the plaintiff. You don't really mean medical,
4 do you? You mean psychologically? Psychological?

5 MR. MADAIIO: Correct, your Honor.

6 THE COURT: Now, did you do any psychological exam in
7 relation to the first case?

8 MR. MADAIIO: No, we did not, your Honor.

9 THE COURT: Have you identified the person who you
10 want to do the exam?

11 MR. MADAIIO: We are in the process. We have not
12 obtained an expert as of right now, but we believe we will
13 shortly.

14 THE COURT: Okay. And then you referred to
15 defendant's own forensic expert.

16 Who is that?

17 MR. MADAIIO: Robert Fisher, your Honor.

18 THE COURT: And he's an expert in what?

19 MR. MADAIIO: He is a rebuttal expert to Ashlee
20 Humphreys, essentially an expert in reputational damage.

21 THE COURT: By the way, in federal court, we stand up.
22 I know the state court is different. I mean, it's probably
23 different in New Jersey, too.

24 Now, you talk also about conducting additional
25 depositions of the plaintiff and potential additional nonparty

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1 witnesses with respect to the new issues.

2 Now, first of all, I can understand, and I imagine,
3 that you want to ask plaintiff questions that go to the issue
4 of emotional and psychological damage with respect to the
5 alleged rape as distinguished from the first defamation that's
6 claimed, and also the second, and questions with respect to
7 October 12, 2022.

8 Anything beyond those subjects?

9 MR. MADAIIO: We believe there could potentially be
10 other witnesses that we would want to depose.

11 THE COURT: Let's talk about the plaintiff first.

12 Anything else besides those subjects?

13 MR. MADAIIO: I believe that would definitely be the
14 vast majority of it, would be related to emotional damages --

15 THE COURT: And what would be the small minority?

16 MR. MADAIIO: I believe that would essentially be it.
17 At this point, we would not want to waive any additional
18 questions we may have.

19 THE COURT: You're not waiving, but I'm going to enter
20 an order here that's going to set the scope of discovery.

21 MR. MADAIIO: Right.

22 THE COURT: So, it's in your interests to tell me if
23 there's some other subject that you want to examine her about.

24 MR. MADAIIO: The other subject would be in terms of
25 reputational damage and anything resulting from the second

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1 statement.

2 THE COURT: The October 12, 2022?

3 MR. MADAIIO: That's correct.

4 THE COURT: Now, who are these potential additional
5 nonparty witnesses with respect to new issues?

6 MR. MADAIIO: We have not identified any at this time,
7 your Honor, but believe that based on the plaintiff's
8 deposition, additional names could be identified that we would
9 want to depose --

10 THE COURT: I'm sorry, you went a little fast for me
11 there.

12 MR. MADAIIO: Apologies, your Honor.

13 THE COURT: Based on the plaintiff's deposition?

14 MR. MADAIIO: Based on the plaintiff's deposition.

15 THE COURT: In the first case?

16 MR. MADAIIO: No, her deposition in the second case.
17 When we --

18 THE COURT: Have you taken her deposition in the
19 second case?

20 MR. MADAIIO: No, we have not.

21 THE COURT: Okay. Go ahead.

22 MR. MADAIIO: We believe, as we delve into the issues
23 of the emotional damage/emotional harm, there could be
24 additional witnesses that could become relevant at that time.

25 THE COURT: Anything else besides that?

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1 MR. MADAIIO: I don't believe so, your Honor.

2 THE COURT: Okay. Thank you.

3 Now, I have one or two other questions about some of
4 your contentions.

5 You say, if I understand you correctly, that you need
6 additional discovery with respect to alleged violations of the
7 New York Penal Law.

8 Did I get that right?

9 MR. MADAIIO: Yes, your Honor.

10 THE COURT: How so?

11 MR. MADAIIO: It's a more fact-intensive question; as
12 opposed to the first case dealt broadly with whether or not
13 this alleged incident did in fact occur. There are now, I
14 believe, five or six additional penal laws that have been
15 cited, each of which has their own individual elements. So, we
16 would want to have the opportunity to have a more fact-specific
17 inquiry into the plaintiff.

18 THE COURT: Well, the complaint in the first action
19 alleges, does it not, all of the elements of rape in the first
20 degree under New York Penal Law?

21 MR. MADAIIO: I believe it does, your Honor.

22 THE COURT: And aren't all of the other offenses to
23 which you've referred either lesser included offenses or simply
24 less serious offenses, the elements of which would be satisfied
25 by the elements of rape in the first degree, like forceable

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1 touching or touching an intimate part?

2 MR. MADAIIO: I believe that's correct, your Honor.
3 But at the time that we did the deposition, we did not have
4 these specific laws in mind, and it would potentially change
5 our line of questioning.

6 THE COURT: Well, explain that to me, please. The
7 allegation here – and I want to get the complaint in front of
8 me, and this is from the original complaint, and it's repeated
9 word for word in the complaint in this action – the plaintiff,
10 speaking about what she says happened in the dressing room at
11 Bergdorf Goodman, said that the defendant pushed her against
12 the wall and put his mouth on her lips. That is the first
13 thing she says. Then she says he seized both her arms and
14 pushed her against the wall, he rammed his hand under her
15 coat/dress and pulled down her tights, he pushed his fingers
16 around her genitals, and he forced his penis into her.

17 Now, what lack of specificity is there in those
18 allegations? And how would it be that you need discovery now
19 about whether he forcibly touched her or about whether he had
20 nonconsensual sexual contact, as distinguished from rape in the
21 first degree? How could that be?

22 MR. MADAIIO: Your Honor, I believe it's a more
23 specific question at the time than we were inquiring into
24 because, essentially, the first question comes down to a
25 statement stating an alleged event never happened; this is a

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1 more specific analysis.

2 THE COURT: Well, no, she's very specific about what
3 she says happened. And your client's position, as I understand
4 it, is, never happened, she made up the whole thing, he didn't
5 know her, and it's a complete work of fiction, right?

6 MR. MADAIIO: That's correct, your Honor.

7 THE COURT: It's not like he's saying, I had sex with
8 her in the dressing room but it was consensual, or I touched
9 her but not the way she said, or I touched her but it was not
10 an intimate part of her body, or I saw her there and there was
11 no sexual contact, or there was sexual contact but it wasn't to
12 gratify my sexual desires or to abuse her in that sort of way.
13 I mean, I could understand your argument if that was his
14 position, but that's not his position.

15 So, what other discovery do you need from the
16 plaintiff? She's told you what she said happened, and she's
17 given you a deposition where you examined her about exactly
18 what happened, right?

19 MR. MADAIIO: Yes, your Honor, I do understand your
20 point. I do understand.

21 THE COURT: Okay, I'm glad.

22 Let me see if there's anything else that I need for
23 clarification.

24 I think not. So, I'll hear both sides about schedule.

25 We'll start with the plaintiff.

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1 MS. KAPLAN: Your Honor, I don't know if I have much
2 to add from the schedule that we submitted. Obviously, there's
3 a very large gap in the parties' positions.

4 We just covered the discovery reasons, whether there
5 are any reasons in discovery that would require the time period
6 that defendant is asking for. And there doesn't appear to
7 be -- at least I'm not personally seeing any reason why you
8 would need, for example, 9.3 months after the answer is served
9 to get to trial.

10 I'll also note, your Honor, that I'm not very good at
11 math but I actually calculated this morning that the 279 days
12 is 9.3 months. Again, it's after the answer. That actually
13 means that the trial date they're proposing probably overlaps
14 when the New York Attorney General's trial is happening, which
15 is in October. The reason I know that, your Honor, is because
16 we had a scheduling issues with Trump's lawyers in another
17 matter pending in this court before Judge Schofield and the
18 question of Attorney General James' trial was a big issue
19 there. So, that trial, the New York Attorney General trial, is
20 scheduled for October.

21 In terms of the motion to dismiss and the stay of
22 discovery, your Honor, again, we think their arguments --

23 THE COURT: I don't think we're up to that.

24 MS. KAPLAN: Okay. We think we're going to get them
25 the report on the 9th. We will certainly make Ms. Carroll

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1 available for her deposition, and, as we've just covered, we
2 don't think it has to be very lengthy.

3 In terms of our expert, our new expert, our
4 psychological expert, we think that they still will have --

5 THE COURT: You think what?

6 MS. KAPLAN: They obviously have a right, if they
7 want, to have an expert, and they may have a right under Rule
8 35 for an exam, but we think they should wait until they see
9 our expert's report because we don't believe --

10 THE COURT: Sorry, you think they should wait until
11 what?

12 MS. KAPLAN: They see our expert's report.

13 THE COURT: See your expert report.

14 MS. KAPLAN: I'm sorry, your Honor.

15 -- on the 9th because she's not going to do an
16 official diagnosis of anything like PTSD or anything like that.
17 So, that will narrow, we think, substantially what they'll need
18 to do in rebuttal.

19 I don't know if I have anything else to say other than
20 what's in our papers, your Honor, in terms of the schedule.

21 THE COURT: Okay. Thank you.

22 Mr. Madaio?

23 MR. MADAIIO: Thank you, your Honor.

24 The schedule that we proposed takes into account,
25 again, that we believe there are significant issues in this

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1 case that were not addressed in the prior case, largely
2 relating to the damages aspect, any reputational damage arising
3 from the second statement as well as obviously the emotional
4 and mental damages arising from the alleged incident itself,
5 which were --

6 THE COURT: Excuse me. Let me clarify one thing.

7 Ms. Kaplan, there's no claim for any economic damages
8 in this case, right?

9 MS. KAPLAN: The reputational damages from the second
10 defamation, I can tell you right now, your Honor, is going to
11 be much less and much more circumscribed than it was from the
12 original defamation.

13 THE COURT: Yes, I understand. But is it a claim for
14 economic damages?

15 MS. KAPLAN: No. I believe it's a claim for what it
16 would take to restore her reputation, given the internet
17 explosion about this, if that happens.

18 So, what it would cost -- and that's what their
19 rebuttal expert addresses, Dr. Fisher or Mr. Fisher -- what it
20 would cost to run a campaign, or a program, that would restore
21 her good name and reputation.

22 THE COURT: Is that recoverable under New York law?

23 MS. KAPLAN: We believe it is, your Honor.

24 THE COURT: Well, that's an interesting theory.

25 Okay. Go ahead, Mr. Madaio. Thank you, Ms. Kaplan.

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1 MR. MADAIIO: Thank you, your Honor.

2 So, the schedule that we proposed, again, takes into
3 consideration that there is significant discovery that does
4 need to be performed with regard to especially the damages
5 aspect. And we essentially are --

6 THE COURT: Explain it to me. What is the discovery
7 that you would take?

8 MR. MADAIIO: Well, we need written discovery --

9 THE COURT: Well, I understand -- right, you want to
10 serve written discovery, meaning what? Documents? Production
11 of documents?

12 MR. MADAIIO: Correct, your Honor, documents and
13 interrogatories.

14 THE COURT: Okay.

15 So, generally speaking, what are the interrogatories
16 going to ask?

17 MR. MADAIIO: Questions aimed at damages, emotional
18 damages, largely.

19 THE COURT: But you're going to have a report from
20 their expert, and you're going to presumably want to take the
21 expert's deposition, right?

22 MR. MADAIIO: That's correct. But we would still want
23 to have the answers from the plaintiff herself.

24 THE COURT: Well, I thought you wanted to take her
25 deposition on the issue of damages.

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MR. MADAIIO: We want to take her deposition as well.

THE COURT: What's the point of doing both?

MR. MADAIIO: The same as would be for any case, and it would be essentially so we can have her answers to the questions and we can question her under oath.

THE COURT: So, give me an idea of what you're going to ask her in written interrogatories. You must have thought about that --

"Were you emotionally damaged by being raped?"

"Answer: Yes.

"How?"

I mean, where are you getting?

MR. MADAIIO: Off the top of my head right now, I would think of a number of questions in terms of the effect she purports that the incidents had on her life, if she treated with anybody up to this date with regard to psychological harm.

THE COURT: That's a legitimate inquiry, sure.

MR. MADAIIO: And any number of other questions that would relate, essentially, to the issues.

THE COURT: Well, I have limited imagination and vision here. Give me an idea of what these innumerable other questions would look like.

MR. MADAIIO: I think, your Honor, it would be mostly about any treatment, any history, and anyone that she had spoken to about any of the effects or any --

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1 THE COURT: You already deposed her in Carroll I about
2 whether she'd ever spoken to anybody about the incident, right?

3 MR. MADAIIO: Right, your Honor. But, I mean, for
4 example, if she had spoken to anybody about a period where she
5 went through depression or anything like that, that may be
6 relevant to this case.

7 THE COURT: You didn't ask about that in the first
8 deposition?

9 MR. MADAIIO: The emotional aspect was never --

10 THE COURT: You didn't ask why you talked to Sharon
11 Jones about this incident? "What did you say to her and what
12 did she say to you?" You didn't ask that question?

13 MR. MADAIIO: No, we did speak about, obviously, the
14 incident in question, but there was -- at least I don't recall
15 an intensive line of questioning with regard to her mental
16 health history and mental well-being.

17 THE COURT: You examined her on her claim that she
18 couldn't form a romantic relationship or a sexual relationship
19 as a result of the alleged rape, right? You did examine her
20 about that?

21 MR. MADAIIO: Yes, your Honor, that's correct.

22 THE COURT: Okay. So let's go on from there. I mean,
23 I interrupted why this should take over a year to do, or nearly
24 a year.

25 MR. MADAIIO: Again, in terms of the time, your Honor,

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1 obviously, we presented dates. We don't want to delay this any
2 longer than is necessary, and those are flexible dates that we
3 proposed. Again, they were largely reflected on the discovery
4 dates that were used in Carroll I. And we took the discovery
5 orders and we essentially mapped them up to here --

6 THE COURT: But in Carroll I, you were conducting
7 discovery about whether this incident ever happened, and, if
8 so, what the incident was, and that's all done.

9 MR. MADAIIO: That's correct. But the damages
10 themselves are significantly different now, and we think that
11 that does justify a significant amount of additional discovery.

12 THE COURT: Well, it justifies some additional
13 discovery; you get no argument from me on that.

14 It's a psychological or emotional distress case,
15 principally, from a damages point of view, right?

16 MR. MADAIIO: Yes, your Honor.

17 THE COURT: Okay.

18 You know it's almost impossible to quantify that
19 scientifically. Somebody either believes the plaintiff and the
20 plaintiff's mental health expert, whatever you want to call
21 them, and then the jury comes up with a number, not because
22 there's a number that the expert witness is going to provide
23 but because they reach a number.

24 That's the way it's done, right? You know that.

25 MR. MADAIIO: Right, yes.

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1 THE COURT: Okay.

2 So, this is not like figuring out the damages in an
3 antitrust case.

4 MR. MADAIIO: Well, again, we think, in terms of the
5 experts and the emotional damages, that there is a significant
6 amount that needs to be done in terms of the examination, the
7 reports after that, the written questions, the deposition, but
8 then an entirely different aspect is also the second defamation
9 claim, which involves a whole second set of purported
10 reputational damage, which not only will we need to figure out
11 how much damage was caused by the second statement purportedly,
12 but also, I guess, where the causal link is between the first
13 statement and the second statement and how the damages differ.

14 THE COURT: And you're going to get discovery of that
15 from somebody? Tell me who.

16 MR. MADAIIO: The plaintiff.

17 THE COURT: Help me - I'm looking for a way to help
18 you - help me here in understanding what you're going to do
19 that you have a legitimate interest in doing.

20 MR. MADAIIO: Well, aside from the expert testimony --
21 again, this is something that we would want to see what
22 evidence, if any --

23 THE COURT: You're going to get an expert report,
24 you're going to get a deposition of the expert. That's clear.
25 That's common ground.

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1 MR. MADAIIO: Your Honor, we would simply want to see
2 what evidence, if any, the plaintiff has to support her claim
3 for damages.

4 THE COURT: Well, you're certainly going to get her
5 deposition on damages. I don't hear any objection to that.

6 Right, Ms. Kaplan?

7 MS. KAPLAN: No objection, your Honor.

8 MR. MADAIIO: That's all we're looking for, is an
9 opportunity to see what evidence the plaintiff has, question
10 her on it, and have the experts opine.

11 THE COURT: Okay, all right.

12 Now, what about the Attorney General trial?

13 MR. MADAIIO: I do believe --

14 THE COURT: When is that set for? Is that really
15 October?

16 MR. MADAIIO: I believe it is scheduled for October 23.

17 THE COURT: Is your office the defense counsel in that
18 case?

19 MR. MADAIIO: We are one of several firms.

20 THE COURT: Any reason why this couldn't be tried
21 considerably earlier than October?

22 MR. MADAIIO: I think, again -- and this will tie into
23 the motion to dismiss issue -- in terms of the --

24 THE COURT: I wouldn't count on that.

25 MR. MADAIIO: All right. But in terms of the period of

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1 discovery, I don't see why we would need until October for the
2 discovery. I think we could likely make it through discovery
3 faster than that point, and then motions and everything, to get
4 to the point of trial.

5 For us, the main issue is the motion to dismiss and
6 motion to stay and the issue that -- we believe there's a
7 serious and substantial question here as to whether or not the
8 Adult Survivors Act is constitutional.

9 THE COURT: How is that issue any different, if at
10 all, from the same question with respect to the Revival Act
11 with respect to victims of child sexual abuse?

12 MR. MADAIIO: I think that that statute serves a
13 different purpose, and it's aimed at a specific subset of
14 vulnerable population, as opposed to the Adult Survivors Act.

15 THE COURT: Okay. Well, sufficient unto the day.

16 My law clerk just passed me a note of a question I
17 meant to ask you.

18 Your footnote 3, Mr. Madaio, on page 5 of the joint
19 submission, talks at one place -- oh, I think you've answered
20 this already -- about a forensic expert. And that, you've told
21 me, is Robert Fisher, right?

22 MR. MADAIIO: That's correct, your Honor.

23 THE COURT: And you anticipate getting a psychologist
24 or a psychiatrist --

25 MR. MADAIIO: Yes, your Honor.

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1 THE COURT: -- to do that sort of examination and a
2 report of the plaintiff's claim of emotional distress?

3 MR. MADAIIO: Yes, your Honor.

4 THE COURT: So, they're two different people?

5 MR. MADAIIO: That's correct, your Honor.

6 THE COURT: I understand that.

7 Okay. I will issue a scheduling order probably later
8 today.

9 Anything else anybody wants to raise with me at this
10 point?

11 MS. KAPLAN: Nothing for plaintiff, your Honor.

12 MR. MADAIIO: Nothing from defendant.

13 THE COURT: Okay. Well, I thank you all for coming
14 in, and I wish everybody a merry Christmas and a happy New
15 Year.

16 MR. MADAIIO: Thank you, your Honor.

17 MS. KAPLAN: Thank you, your Honor.

18 * * *